

108TH CONGRESS
1ST SESSION

H. R. 1412

IN THE SENATE OF THE UNITED STATES

APRIL 2, 2003

Received; read twice and referred to the Committee on Health, Education,
Labor, and Pensions

AN ACT

To provide the Secretary of Education with specific waiver authority to respond to a war or other military operation or national emergency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; FINDINGS; REFERENCE.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Higher Education Relief Opportunities for Students Act
4 of 2003”.

5 (b) FINDINGS.—The Congress finds the following:

6 (1) There is no more important cause than that
7 of our nation’s defense.

8 (2) The United States will protect the freedom
9 and secure the safety of its citizens.

10 (3) The United States military is the finest in
11 the world and its personnel are determined to lead
12 the world in pursuit of peace.

13 (4) Hundreds of thousands of Army, Air Force,
14 Marine Corps, Navy, and Coast Guard reservists
15 and members of the National Guard have been
16 called to active duty or active service.

17 (5) The men and women of the United States
18 military put their lives on hold, leave their families,
19 jobs, and postsecondary education in order to serve
20 their country and do so with distinction.

21 (6) There is no more important cause for this
22 Congress than to support the members of the United
23 States military and provide assistance with their
24 transition into and out of active duty and active
25 service.

1 (c) REFERENCE.—References in this Act to “the
2 Act” are references to the Higher Education Act of 1965
3 (20 U.S.C. 1001 et seq.).

4 **SEC. 2. WAIVER AUTHORITY FOR RESPONSE TO MILITARY**
5 **CONTINGENCIES AND NATIONAL EMER-**
6 **GENCIES.**

7 (a) WAIVERS AND MODIFICATIONS.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, unless enacted with specific ref-
10 erence to this section, the Secretary of Education
11 (referred to in this Act as the “Secretary”) may
12 waive or modify any statutory or regulatory provi-
13 sion applicable to the student financial assistance
14 programs under title IV of the Act as the Secretary
15 deems necessary in connection with a war or other
16 military operation or national emergency to provide
17 the waivers or modifications authorized by para-
18 graph (2).

19 (2) ACTIONS AUTHORIZED.—The Secretary is
20 authorized to waive or modify any provision de-
21 scribed in paragraph (1) as may be necessary to en-
22 sure that—

23 (A) recipients of student financial assist-
24 ance under title IV of the Act who are affected
25 individuals are not placed in a worse position fi-

1 nancially in relation to that financial assistance
2 because of their status as affected individuals;

3 (B) administrative requirements placed on
4 affected individuals who are recipients of stu-
5 dent financial assistance are minimized, to the
6 extent possible without impairing the integrity
7 of the student financial assistance programs, to
8 ease the burden on such students and avoid in-
9 advertent, technical violations or defaults;

10 (C) the calculation of “annual adjusted
11 family income” and “available income”, as used
12 in the determination of need for student finan-
13 cial assistance under title IV of the Act for any
14 such affected individual (and the determination
15 of such need for his or her spouse and depend-
16 ents, if applicable), may be modified to mean
17 the sums received in the first calendar year of
18 the award year for which such determination is
19 made, in order to reflect more accurately the fi-
20 nancial condition of such affected individual
21 and his or her family;

22 (D) the calculation under section
23 484B(b)(2) of the Act (20 U.S.C. 1091b(b)(2))
24 of the amount a student is required to return
25 in the case of an affected individual may be

1 modified so that no overpayment will be re-
2 quired to be returned or repaid if the institution
3 has documented (i) the student's status as an
4 affected individual in the student's file, and (ii)
5 the amount of any overpayment discharged; and

6 (E) institutions of higher education, eligi-
7 ble lenders, guaranty agencies, and other enti-
8 ties participating in the student assistance pro-
9 grams under title IV of the Act that are located
10 in areas that are declared disaster areas by any
11 Federal, State or local official in connection
12 with a national emergency, or whose operations
13 are significantly affected by such a disaster,
14 may be granted temporary relief from require-
15 ments that are rendered infeasible or unreason-
16 able by a national emergency, including due
17 diligence requirements and reporting deadlines.

18 (b) NOTICE OF WAIVERS OR MODIFICATIONS.—

19 (1) IN GENERAL.—Notwithstanding section 437
20 of the General Education Provisions Act (20 U.S.C.
21 1232) and section 553 of title 5, United States
22 Code, the Secretary shall, by notice in the Federal
23 Register, publish the waivers or modifications of
24 statutory and regulatory provisions the Secretary

1 deems necessary to achieve the purposes of this sec-
2 tion.

3 (2) TERMS AND CONDITIONS.—The notice
4 under paragraph (1) shall include the terms and
5 conditions to be applied in lieu of such statutory and
6 regulatory provisions.

7 (3) CASE-BY-CASE BASIS.—The Secretary is not
8 required to exercise the waiver or modification au-
9 thority under this section on a case-by-case basis.

10 (c) IMPACT REPORT.—The Secretary shall, not later
11 than 15 months after first exercising any authority to
12 issue a waiver or modification under subsection (a), report
13 to the Committee on Education and the Workforce of the
14 House of Representatives and the Committee on Health,
15 Education, Labor and Pensions of the Senate on the im-
16 pact of any waivers or modifications issued pursuant to
17 subsection (a) on affected individuals and the programs
18 under title IV of the Act, and the basis for such deter-
19 mination, and include in such report the Secretary's rec-
20 ommendations for changes to the statutory or regulatory
21 provisions that were the subject of such waiver or modi-
22 fication.

23 (d) NO DELAY IN WAIVERS AND MODIFICATIONS.—
24 Sections 482(c) and 492 of the Higher Education Act of
25 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the

1 waivers and modifications authorized or required by this
2 Act.

3 **SEC. 3. TUITION REFUNDS OR CREDITS FOR MEMBERS OF**
4 **ARMED FORCES.**

5 (a) SENSE OF CONGRESS.—It is the sense of Con-
6 gress that—

7 (1) all institutions offering postsecondary edu-
8 cation should provide a full refund to students who
9 are affected individuals for that portion of a period
10 of instruction such student was unable to complete,
11 or for which such individual did not receive academic
12 credit, because he or she was called up for active
13 duty or active service; and

14 (2) if affected individuals withdraw from a
15 course of study as a result of such active duty or ac-
16 tive service, such institutions should make every ef-
17 fort to minimize deferral of enrollment or reapplica-
18 tion requirements and should provide the greatest
19 flexibility possible with administrative deadlines re-
20 lated to those applications.

21 (b) DEFINITION OF FULL REFUND.—For purposes
22 of this section, a full refund includes a refund of required
23 tuition and fees, or a credit in a comparable amount
24 against future tuition and fees.

1 **SEC. 4. USE OF PROFESSIONAL JUDGMENT.**

2 A financial aid administrator shall be considered to
3 be making a necessary adjustment in accordance with sec-
4 tion 479A(a) of the Act if the administrator makes adjust-
5 ments with respect to the calculation of the expected stu-
6 dent or parent contribution (or both) of an affected indi-
7 vidual, and adequately documents the need for the adjust-
8 ment.

9 **SEC. 5. DEFINITIONS.**

10 In this Act:

11 (1) **ACTIVE DUTY.**—The term “active duty” has
12 the meaning given such term in section 101(d)(1) of
13 title 10, United States Code, except that such term
14 does not include active duty for training or attend-
15 ance at a service school.

16 (2) **AFFECTED INDIVIDUAL.**—The term “af-
17 fected individual” means an individual who—

18 (A) is serving on active duty during a war
19 or other military operation or national emer-
20 gency;

21 (B) is performing qualifying National
22 Guard duty during a war or other military op-
23 eration or national emergency;

24 (C) resides or is employed in an area that
25 is declared a disaster area by any Federal,

1 State, or local official in connection with a na-
2 tional emergency; or

3 (D) suffered direct economic hardship as a
4 direct result of a war or other military oper-
5 ation or national emergency, as determined by
6 the Secretary.

7 (3) MILITARY OPERATION.—The term “military
8 operation” means a contingency operation as such
9 term is defined in section 101(a)(13) of title 10,
10 United States Code.

11 (4) NATIONAL EMERGENCY.—The term “na-
12 tional emergency” means a national emergency de-
13 clared by the President of the United States.

14 (5) SERVING ON ACTIVE DUTY.—The term
15 “serving on active duty during a war or other mili-
16 tary operation or national emergency” shall include
17 service by an individual who is—

18 (A) a Reserve of an Armed Force ordered
19 to active duty under section 12301(a),
20 12301(g), 12302, 12304, or 12306 of title 10,
21 United States Code, or any retired member of
22 an Armed Force ordered to active duty under
23 section 688 of such title, for service in connec-
24 tion with a war or other military operation or
25 national emergency, regardless of the location

1 at which such active duty service is performed;
2 and

3 (B) any other member of an Armed Force
4 on active duty in connection with such war, op-
5 eration, or emergency or subsequent actions or
6 conditions who has been assigned to a duty sta-
7 tion at a location other than the location at
8 which such member is normally assigned.

9 (6) QUALIFYING NATIONAL GUARD DUTY.—The
10 term “qualifying National Guard duty during a war
11 or other military operation or national emergency”
12 means service as a member of the National Guard
13 on full-time National Guard duty (as defined in sec-
14 tion 101(d)(5) of title 10, United States Code)
15 under a call to active service authorized by the
16 President or the Secretary of Defense for a period
17 of more than 30 consecutive days under section
18 502(f) of title 32, United States Code, in connection
19 with a war, another military operation, or a national
20 emergency declared by the President and supported
21 by Federal funds.

1 SEC. 6. TERMINATION OF AUTHORITY.

2 The provisions of this Act shall cease to be effective
3 at the close of September 30, 2005.

Passed the House of Representatives April 1, 2003.

Attest: **JEFF TRANDAHL,**
Clerk.